IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 318 of 2000

CRA.82/1998 of SESSIONS COURT, THRISSUR
ST.1679/1996 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR
.....

REVN. PETITIONER/APPELLANT/ACCUSED:

HAMZA, S/O. ENTHIL,
CHALATTPARAMBIL VEEDU,
OLLUKKARA VILLAGE,
KRISHNAPURAM DESOM.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENTS/RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. P.N. SANTHOSH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY, J.

Crl.R.P. NO. 318 of 2000

Dated this the 26th day of September, 2007

Order

Petitioner was convicted and sentenced to undergo simple imprisonment for one month under sections 279 and 337 and simple imprisonment for two months under section 338 of the Indian Penal Code by the Magistrate's court. In appeal, the conviction was confirmed, but, sentence was modified. Operative portion of the appellate judgment is as follows:

> "a) This appeal is allowed in part.
>
> b) The verdict of guilty and conviction imposed on the appellant u/s.279, 337 and 338 IPC are upheld.
>
> c) But the sentence imposed on the appellant is modified and reduced. In supersession of the sentence imposed on the appellant by the learned Magistrate, he is sentenced u/s. 338 IPC to undergo S.I. for a period of 14 days and to pay a fine of Rs.1,000/-. In default of payment of fine he shall undergo S.I. for further period of 10 days. He is further sentenced u/s. 279 and 337 IPC to pay a fine of Rs.1,000/- and Rs.500/- respectively. In

> default of payment of fine, he shall undergo S.I. for a further period of 2 weeks and one week respectively.
>
> d) The appellant is further disqualified from driving any class of vehicles for a period of six months from the date of endorsement."

The allegation was that on 6.8.1996 at 8.15 p.m. the revision petitioner drove bus KL/8D 6066 through Palakkad-Thrissur national highway in a rash and negligent manner at an excessive speed endangering human life. The bus driven by the petitioner allegedly went and hit at the rear of lorry No.TN/37 3492 which was parked on the southern side of the road causing injuries to passengers in the bus driven by the petitioner. PW1 is a passenger who sustained fracture of distal phalanx of left thumb. PW1 who gave first information statement became hostile and stated that he is not aware as to who was driving the lorry and he does not know what happened. PW2, another injured witness, stated that accused was driving the bus with over speed and it hit a lorry on the back side. According to him, the lorry was not

parked. It was also running. According to PW3, the bus hit on a stationed lorry. The lorry was parked on the left side. He also stated that there was drizzling and darkness. Doctor was examined to prove the injury. Evidence of PW2 was mainly believed by the court and found that the accused was driving the bus in a rash and negligent manner so as to endanger human life. Appellate court upheld the finding and though confirmed the conviction, altered the sentence. I am of the view that there was drizzling and darkness. The lorry was parked without park light. In the above circumstances, though I am confirming the conviction, I am altering the sentence imposed. The sentence imposed on the petitioner under section 338 to undergo simple imprisonment or a period of 14 days is set aside, but, he is sentenced to pay a fine of Rs. 1,000/- as ordered. No other modification of the sentence is necessary. Conviction and sentence are confirmed except conviction and sentence of simple imprisonment for 14 days under section 338 IPC. Default sentence in the

case of default in payment of fine is not interfered.

The criminal revision petition is disposed of accordingly.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

Crl.R.P. No.318/2000

Order

Dated:26th September, 2007